Supreme Court, U. S.
FILED
JAN 3 1981
MICHAEL RODAK, JR., CLERK

NO. 80-1116

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

THE STANDARD REGISTER COMPANY,

PETITIONER,

V.

GRAPHIC ARTS INTERNATIONAL UNION LOCAL 508, O-K-I, SUCCESSOR TO LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 275,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether the Court of Appeals' decision that an order compelling arbitration in a suit brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, is neither a "final" judgment within the meaning of 28 U.S.C. § 1291, nor an appealable interlocutory order within the meaning of 28 U.S.C. § 1292(a)(1), conflicts with this Court's decision in Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957), the decision of the Fifth Circuit Court of Appeals in Wells v. Southern Airways, Inc., 517 F.2d 132 (5th Cir. 1975), cert. denied, 425 U.S. 914 (1976), and the decision of the First Circuit Court of Appeals in Robbins v. George W. Prescott Publishing Co., 614 F.2d 3 (1st Cir. 1980).

PARTIES

The parties to the proceeding in the court whose judgment is sought to be reviewed are Graphic Arts International Union, Local 508 O-K-I, successor to Lithographers and Photoengravers International Union, Local 275; The Standard Register Company; and Freeman F. Suagee.

TABLE OF CONTENTS

	Page
Table of Authorities	1
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Statement of the Case	5
Reasons for Granting the Writ	15
I. The Decision of the Court of Appeals Conflicts With This Court's Decision in Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957)	15
II. The Decision of the Court of Appeals Conflicts With the Decisions Reached by Other Courts of Appeals Which Have Considered the Same Issue	20
III. The Decision of the Court of Appeals Raises Important Questions of Federal Law Which Should be Resolved by This Court	25
Conclusion	28

TABLE OF AUTHORITIES

Cases — Page

City of Naples v. Prepakt Concrete Co., 490 F.2d 1983 (5th Cir.), modified, 494 F.2d 54 (5th Cir. 1974) 23,26

Clark v. Kraftco Corp., 447 F.2d 933 (2nd Cir. 1971) 24

Electrical Workers v. Northeast Telephone Co., 105 L.R.R.M. 2211 (1st Cir. 1980) 22

Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 551 (1957) 15,16,17,19,20,23,24,25,26,27

New England Power Co. v. Asiatic Petroleum Corp., 456 F.2d 183 (1st Cir. 1976) 23,26

Robbins v. George W. Prescott Publishing Co., 614 F.2d 3 (1st Cir. 1980) 22

Rogers v. Schering Corp., 262 F.2d 180 (3rd Cir.), cert. denied, 359 U.S. 991 (1959) 18

Wells v. Southern Airways, Inc., 517 F.2d 132 (5th Cir. 1975), cert. denied, 425 U.S. 914 (1976) 21,22

Statutes

9 U.S.C. § 4 (1976) 10,23,25,26

28 U.S.C. § 1291 (1976) 16,17,18,20,21,22,23,24,25

28 U.S.C. § 1292(a)(1) (1976) 21,22,23,24,25

Labor Management Relations Act, § 301, 29 U.S.C. § 185 (1976) .. 10,13,14,16,17,18,19,20,25,26,27

OPINIONS BELOW

The decisions of the courts below in this case are not officially reported. The opinion and judgment of the district court is attached as Appendix B. The opinion of the Court of Appeals is attached as Appendix A.

JURISDICTION

The decision of the court below issued and was entered on August 21, 1980. The Court of Appeals denied the Company's Petition for Rehearing and Suggestion for Rehearing en banc on October 3, 1980 (App. C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 4 of Title 9 of the United States Code provides, in pertinent part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration

> may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. ... The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. ... If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof....

Section 1291 of Title 28 of the United States Code provides, in pertinent part:

> The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ... except where a direct review may be had in the Supreme Court.

Section 1292(a)(1) of Title 28 of the United States Code provides, in pertinent part:

> (a) The courts of appeals shall have jurisdiction of appeals from:
>
> (1) Interlocutory orders of the district courts of the United States ..., or of the judges thereof, granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court....

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this

> chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

The Standard Register Company ("Company") and Lithographers and Photoengravers International Union, Local 275 ("Union")[1/] were parties to a collective bargaining agreement. The Agreement, effective March 1, 1971 through February 28, 1974, established the wages and conditions of employment for employees in the Lithographic Division of the Company's Dayton plant. The Agreement contained a grievance-arbitration procedure,

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1/ The Lithographers and Photoengravers International Union was succeeded by the Graphic Arts International Union ("GAIU" or "Union").

Article 27, applicable to all disputes arising over interpretation or application of the Agreement. The parties agreed that the grievance-arbitration process was to be the sole means of settling disputes and that the decision of a neutral arbitrator would be binding on both parties (App. D).

During the life of the Agreement, a dispute arose under the Agreement over whether the Company was obligated to implement a wage increase. The dispute centered on the fact that the International Union, which was not a party to the Agreement, wanted to renege on a Supplemental Agreement endorsed by the employees and signed by Local 275, waiving the wage increase. At the behest of

the International Union, Local 275 filed a grievance in an attempt to cancel the Supplemental Agreement. The Company denied the grievance and the Union sought arbitration. The Company denied that the dispute was subject to arbitration.

The Union filed suit against the Company on August 28, 1972, in the United States District Court for the Southern District of Ohio, Western Division, asking that the parties' dispute be ordered to arbitration. On February 5, 1973, Judge Carl A. Weinman ordered the parties to arbitrate the dispute pursuant to the contract.

In accordance with the contract, the Union and the Company selected Freeman F. Suagee as arbitrator for the dispute. On July 11, 1973, a full and complete hearing was held by Arbitrator Suagee in which both parties called witnesses, cross-examined witnesses, and introduced

exhibits. Post-hearing briefs were submitted by mid-September of 1973. Arbitrator Suagee took the case under advisement.

Although no award was immediately forthcoming, the Union did not contact Arbitrator Suagee. At no time, from the submission of briefs until late June of 1975, did the Union object to Arbitrator Suagee's delay in rendering his award.

On June 27, 1974, and again on September 30, 1975, counsel for the Union wrote Arbitrator Suagee acknowledging his continuing jurisdiction over the dispute by asking when an award could be expected. The letters expressed no other purpose.

Four months later, on November 7, 1975, counsel for the Union wrote a letter to counsel for the Company suggesting that the parties select a new arbitrator to decide the dispute based on the transcripts of the hearing conducted by Arbitrator Suagee. Counsel for the Company replied

by letter expressing his opinion at the time that such action would be inappropriate.

On March 9, 1976, the Union filed a "Motion for Supplemental Order" in the district court requesting that the court terminate the jurisdiction of Arbitrator Suagee and order rearbitration. On June 18, 1976, the Company filed a Memorandum in opposition to the Union's Motion, arguing that if the Union had a dispute regarding the delayed decision, that complaint involved a procedural question subject to the parties' grievance-arbitration process. The court did not rule on the Union's Motion. The Union filed no grievance.

A full four years after post-hearing briefs had been submitted, and over a year after filing its Motion for Supplemental Order, the Union again acknowledged Arbitrator Suagee's continuing

jurisdiction on September 28, 1977. Counsel for the Union wrote counsel for the Company a letter "inviting" the Company "to join with us in requesting Arbitrator Suagee to make his decision."

Nine months later, the Union filed a separate lawsuit in district court alleging that the Company had violated its "duty" under Article 27 (Grievance and Arbitration) of the parties' Agreement in not joining with the Union in terminating Arbitrator Suagee's jurisdiction.[2/] The suit sought $2,000,000 in damages from the Company or, alternatively, an order compelling a second arbitration before a different arbitrator. In its complaint, the Union alleged that the Company had a contractual obligation or "duty" to

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[2/] Jurisdiction for the suit was assertedly based on 28 U.S.C. §§ 1331 and 1337; 29 U.S.C. § 185(a); and 9 U.S.C. § 10 (App. E, p. E2).

join in removing Arbitrator Suagee, even though it had never filed a grievance or pursued any such claim through the grievance-arbitration steps spelled out in the parties' contract.

On September 21, 1978, Arbitrator Suagee notified the Union that he was prepared to render an award. The Union did not advise Arbitrator Suagee of any termination of its consent to his continuing jurisdiction over the dispute.[3/]

On April 30, 1980, the district court issued its decision, terminating Arbitrator Suagee's jurisdiction and ordering the parties to rearbitrate. The court held no evidentiary hearing.

3/ By letter dated February 21, 1980, Arbitrator Suagee again advised the Union that he was prepared to render an award. The Union advised Arbitrator Suagee by letter dated February 26, 1980, that a ruling "at this time is inappropriate."

In the district court's view, by terminating Arbitrator Suagee's jurisdiction and ordering the parties to rearbitrate, it was "securing a prompt, economical and adequate solution" to the parties' dispute. The district court ignored the fact that, by this time, Arbitrator Suagee had been prepared to rule for more than one and one-half years prior to its decision.

The district court premised its decision on the view that, "[a]lone of the parties involved, plaintiff Union has diligently sought to arbitrate the dispute" (App. B, p. B6-B7). Reasoning from this basic misconception, the court ignored the fact that the Union had, at no time, followed any of the steps in the grievance-arbitration process of the parties' collective bargaining agreement to grieve the delayed award of which it complained. Consequently, the court

failed to address the fact that a court is prohibited from intervening in a contract dispute where a party has failed to exhaust available contract remedies.

In terminating Arbitrator Suagee's jurisdiction, the court rejected "the notion of non-intervention in toto" (App. B, p. B-11-B12). The court reasoned that, "[i]f there is power to order arbitration initially ... there must be authority to intervene when the arbitration process has been circumvented" by what the court termed an "unconscionable delay by the arbitrator" (App. B, p. B12). Yet the court never addressed the critical fact that Arbitrator Suagee was prepared to rule at the time he was removed. Nor did the court address the fact that once Arbitrator Suagee ruled, either the Union or the Company could have sought review of that award under settled Section 301 authorities. Its Judgment, entered on

May 1, 1980, ordered that,

> [p]ursuant to Section 27.4 of the Collective Bargaining Agreement, plaintiff Union and defendant Company are hereby directed to request the Federal Mediation and Conciliation Service to supply a panel of seven arbitrators and to proceed thereafter in accordance with such section.

See Appendix B, at B17-B18.

The Company appealed the court's order compelling rearbitration of the dispute. The district court's order was both a decree compelling arbitration under Section 301 of the Labor Management Relations Act and an award of one of the alternative forms of relief sought in the complaint. For all practical purposes, it ended the lawsuit. It was a "final decision." The Company at that point had a right to an immediate appeal of the erroneous decision of the district court,

before being forced to rearbitrate the dispute with the Union.

The Court of Appeals, however, dismissed the Company's appeal. It viewed the district court's order compelling arbitration as merely "a step in the judicial enforcement of the original arbitration order and therefore not final and appealable ..." (App. A, p. A3). It also observed that the district court's order of rearbitration "[would] not allow for full relief to be accorded by the arbitrator's decision," and was, therefore, in its view an interlocutory order which it was "without jurisdiction to review ..." (App. A, p. A3-A4).

REASONS FOR GRANTING THE WRIT

I.

The Decision of the Court of Appeals Conflicts With This Court's Decision in Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957)

A. The Appealability of Orders Compelling Arbitration Under Section 301 was Established by This Court in Goodall-Sanford, Inc. v. United Textile Workers

In Goodall-Sanford, Inc. v. United Textile Workers, a union filed suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, to compel arbitration. The district court ordered the parties to arbitrate, and the employer appealed to the Court of Appeals for the First Circuit, which affirmed the lower court's decision. Goodall-Sanford, Inc. v. United Textile Workers, 233 F.2d 104 (1st Cir. 1956). On certiorari to this Court, a principal issue was whether an order compelling parties to arbitrate under Section 301 is a "final decision" within the meaning of 28 U.S.C. § 1291. In holding that such an order was a "final decision," this Court observed:

> The right enforced here is one arising under § 301(a) of the Labor Management Relations Act

> of 1947. Arbitration is not merely a step in judicial enforcement of a claim nor auxiliary to a main proceeding, but the full relief sought. A decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is, therefore, a 'final decision' within the meaning of 28 U.S.C. § 1291.

353 U.S. at 551-52.

B. The Decision of the Court of Appeals in the Instant Case Conflicts With the Rule Established in Goodall-Sanford, Inc. v. United Textile Workers

Goodall-Sanford held, quite simply, that an order enforcing an arbitration provision in a collective bargaining agreement under Section 301 is a "final decision" within the meaning of 28 U.S.C. § 1291. In the instant case, the district court directed the parties to proceed to arbitration pursuant to Section 27.4 of the parties' collective bargaining agreement (App. B, p. B17-B18).

Its Judgment cannot be construed as anything other than a "decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement ..." and, therefore, an appealable "final decision" within the meaning of Section 1291.[4/]

In holding the district court's order compelling rearbitration to be a nonappealable interlocutory order, the

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4/ It matters not, for purposes of determining finality, that the district court's order compelled the parties to rearbitrate their dispute, as opposed to compelling an initial arbitration. "Certainly if an original order to arbitrate is final and appealable a later order in the same case vacating the award and directing another arbitration ... should on principle be equally final and appealable." Rogers v. Schering Corp., 262 F.2d 180, 182 (3rd Cir.), cert. denied, 359 U.S. 991 (1959). Nor is it significant that the district court did not explicitly rule upon the Union's request for damages. Having granted one of the two alternative forms of relief sought, the district court cannot artificially defeat the Company's right of appeal by taking the damage claims "under submission pending arbitration" (App. B, p. B15).

Court of Appeals departed from the straightforward rule of Goodall-Sanford and announced a new, unprecedented test for determining appealability in suits brought under Section 301 to compel arbitration. The Goodall-Sanford Court held that in a suit to compel arbitration under Section 301 pursuant to an arbitration provision in a collective bargaining agreement, arbitration is always "the full relief sought," and never "merely a step in the judicial enforcement of a claim." As the Goodall-Sanford Court stated, because "[a]rbitration is not merely a step in judicial enforcement of a claim nor auxiliary to a main proceeding, but the full relief sought [in a suit to enforce an arbitration clause under Section 301] ..., [a] decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is ... a 'final decision' within the meaning of 28 U.S.C. § 1291." 353 U.S. at 551-552.

In holding the district court's order in the instant case to be nonappealable, the Court of Appeals did not follow Goodall-Sanford. Instead of abiding by Goodall-Sanford's clear directive that arbitration is never merely a step in the judicial enforcement of a claim, but is the full relief sought in a suit to enforce an arbitration clause under Section 301, the Court of Appeals erroneously held that an order compelling arbitration may be merely a step in the judicial enforcement of the claim, and not the full relief sought (App. A, p. A2-A3). Its decision not only alters the meaning of Goodall-Sanford but also is in direct conflict with the holding of that case.

II.

The Decision of the Court of Appeals Conflicts With the Decisions Reached by Other Courts of Appeals Which Have Considered the Same Issue

A. Other Courts of Appeals Which Have Considered the Appealability of Orders Compelling Arbitration in a Labor Context Have Concluded, Without Exception, That Such Orders are Appealable

Both the Court of Appeals for the Fifth Circuit and the Court of Appeals for the First Circuit have concluded that orders compelling arbitration in a labor context are appealable, either as "final decisions" under 28 U.S.C. § 1291 or as analogous to orders granting injunctions under 28 U.S.C. § 1292(a)(1). In Wells v. Southern Airways, Inc., 517 F.2d 132 (5th Cir. 1975), cert. denied, 425 U.S. 914 (1976), the Fifth Circuit Court of Appeals faced the precise issue which was before the Court of Appeals in the case below. In Wells, the district court had held an initial arbitration/review proceeding to be ineffectual, and ordered rearbitration of the dispute before a different panel. Several unresolved issues remained pending in district court

while the parties were ordered to rearbitrate. See 522 F.2d 707. The employer appealed the order to rearbitrate, and the appellee challenged the order's appealability. The Court of Appeals, with no hesitation, found the order compelling rearbitration to be a "final decision" within the meaning of Section 1291. 517 F.2d at 134 n.3. The First Circuit Court of Appeals, in Robbins v. George W. Prescott Publishing Co., 614 F.2d 3 (1st Cir. 1980), observed that an order compelling arbitration in a labor context "may be analogous to an injunction, and thus appealable under 28 U.S.C. § 1292(a)(1) ...," or "could be ... in effect, a final order under Section 1291." 614 F.2d at 5 (citations omitted). See also Electrical Workers v. Northeast Telephone Co., 105 L.R.R.M. 2211 (1st Cir. 1980) (assuming, without deciding, that such an order is appealable either as a "final

decision" under Section 1291 or as analogous to an "interlocutory order ... granting [an] injunction" under Section 1292 (a)(1)). Cf. City of Naples v. Prepakt Concrete Co., 490 F.2d 182 (5th Cir.) modified, 494 F.2d 511 (5th Cir. 1974) (order compelling arbitration under Section 4 of the Arbitration Act, 9 U.S.C. § 4, "final" and reviewable on appeal); New England Power Co. v. Asiatic Petroleum Co., 456 F.2d 183, 188 (1st Cir. 1972) (order compelling arbitration under Section 4 of the Arbitration Act appealable as a "final decision" under Section 1291, citing Goodall-Sanford, Inc. v. United Textile Workers).

B. The View Expressed by the Court of Appeals in the Instant Case is in Direct Conflict with the View Expressed by Other Courts of Appeals

Those Courts of Appeals which have considered the appealability of a district court's order compelling arbitration in a

labor context have concluded, without exception, that such an order is appealable either as a "final decision" under Section 1291 or as analogous to an "interlocutory order ... granting an injunction" under Section 1292(a)(1). The contrary view of the Court of Appeals for the Sixth Circuit announced in the instant case is in direct conflict with the view of the other Courts of Appeals.[5/]

III.

The Decision of the Court of Appeals Raises Important Questions of Federal Law Which Should be Resolved by This Court

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5/ The Court of Appeals cited only Clark v. Kraftco Corp., 447 F.2d 993 (2nd Cir. 1971), for its unexpected departure from the rule established in Goodall-Sanford and followed by other Courts of Appeals. Clark involved only an appeal from a denial of summary judgment and remand to an actuarial consultant to redetermine certain pension obligations, and not, as the Clark court noted, an appeal from an order compelling arbitration pursuant to an arbitration provision contained in a collective bargaining agreement. See id. at 933.

A fixed rule in the area of federal labor law has been that "[a] decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is ... a 'final decision' within the meaning of 28 U.S.C. § 1291." Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550, 551-552 (1957). The rule established by Goodall-Sanford has been so well-understood that no Court of Appeals, until now, has departed from its teaching. Such a fixed rule on appealability should have proved most useful, as in the instant case, where the facts were so confounding.

The influence of Goodall-Sanford has not been confined to the labor context. The case has led other courts, construing arbitration clauses contained in commercial contracts, to hold that orders compelling arbitration under Section 4 of the Arbitration Act are "final decisions"

within the meaning of 28 U.S.C. § 1291. See, e.g., City of Naples, supra; New England Power Co., supra. The underlying rationale of these decisions is that predictability on the right and timing of appeal is as valuable in the marketplace as it is in labor relations. Incredibly, the Court of Appeals in the instant case admitted that the district court's order would be appealable as a "final decision" under the Arbitration Act, but considered it nonappealable under Section 301 (App. A, p. A2-A3). Its holding turns the rule of Goodall-Sanford on its head: the rule was initially announced in a Section 301 suit and later extended to suits under Section 4 of the Arbitration Act.

The distinction seized upon by the Court of Appeals not only contravenes historical precedent, but also is wholly unjustified. Absolutely no rational basis exists for allowing appeals from orders

compelling arbitration in suits under Section 4 of the Arbitration Act, while disallowing appeals from the same orders entered in suits under Section 301.

The Court of Appeals' misapplication of Goodall-Sanford introduces a dangerous precedent into federal labor law. The unanimous and accepted view in all the Circuits has been that a litigant who is ordered to arbitrate a dispute under Section 301 has an absolute right to appeal that decision before proceeding to arbitration. Now, if the decision below is allowed to stand, the Section 301 litigant who finds itself in the Sixth Circuit will face a Hobson's choice. If no appeal is taken, is the right of appeal irreparably lost? Should it appeal the order to arbitrate only in the rare, pristine case where arbitration is indisputably the only relief sought? Is immediate appeal barred by the opposing party joining a spurious

claim for "other relief" in the suit to compel arbitration? Conversely, may a Section 301 plaintiff now defeat the Goodall-Sanford-protected right of appeal by including such a claim in the complaint? Such troubling questions can be put to rest only by this Court's prompt review of the decision below.

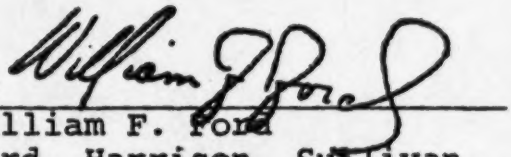
The right of appeal established by Goodall-Sanford is an important mechanism for the speedy and fair resolution of labor disputes. This Court should review the decision of the Court of Appeals in order to restore uniformity on this issue among the Circuits and preserve the right of appeal established in Goodall-Sanford, Inc. v. United Textile Workers.

CONCLUSION

For these reasons, Petitioner respectfully submits that a writ of

certiorari issue to review the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,



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APPENDIX A

80-3400

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GRAPHIC ARTS INTERNATIONAL UNION LOCAL 508, O-K-I, Successor to LITHEROGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 275,

Plaintiff-Appellee

v.

THE STANDARD REGISTER COMPANY,

Defendant-Appellant

and

FREEMAN SUAGEE,

Defendant

FILED
AUG 21, 1980
JOHN P. HEHMAN
CLERK

ORDER

Before: ENGEL, KEITH and MERRITT, Circuit Judges

The Standard Register Company brought this matter before the court upon a motion to stay pending appeal of a judgment of the district court which removed an arbitrator and directed the parties to resubmit their contract

dispute to a second arbitrator. In response, Graphic Arts International Union moves to dismiss the appeal for lack of jurisdiction.

Upon consideration of the motions, briefs and responses filed thereto, the court finds that appellant has shown neither a likelihood of success on the merits, nor irreparable injury. Reed v. Rhodes, 549 F.2d 1046 (6th Cir.), stay vacated 549 F.2d 1950 (6th Cir. 1976). Therefore, the prerequisites for a motion to stay are not met by the Standard Register Company.

Although an order compelling arbitration is final and appealable under the Federal Arbitration Act, 9 U.S.C. § 4, an arbitration order under section 301 of the Labor Management Relations Act is final only if it is not merely a step in the judicial enforcement of a claim,

nor auxiliary to the principal proceedings, and is the full relief sought. Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957); Clark v. Kraftco Corp., 447 F.2d 933, 935 (2d Cir. 1971). The original suit in these consolidated actions resulted in an arbitration order from which Standard Register did not appeal. The arbitrability of the underlying dispute is, therefore, not at issue here. However, the Company disputes the district court's action in ordering resubmission of the issue to a second arbitrator. In the opinion of the court, the order reviewed here is but a step in the judicial enforcement of the original arbitration order and therefore not final and appealable under Goodall-Sanford, Inc. v. United Textile Workers, supra. We also note that the

consolidation of the original arbitration suit with the complaint filed in July, 1978, which seeks both monetary and equitable relief from Standard Register and the first-appointed arbitrator, will not follow for full relief to be accorded by the arbitrator's decision. Because the order appealed from is, therefore, interlocutory, this court is without jurisdiction to review it at this time. Accordingly,

IT IS ORDERED that the motion for stay be and it is hereby denied. It is further ORDERED that the motion to dismiss be and hereby is granted.

ENTERED BY ORDER OF THE COURT

John P. Hehman

CLERK

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GRAPHIC ARTS INTERNATIONAL UNION,

Plaintiff,

v.

THE STANDARD REGISTER CO.

and

FREEMAN SUAGEE,

Defendants.

JOHN D. LYTER, CLERK
APR 30 9 02 am '80
(U.S. District Court, Southern Dist. Ohio Western Div. Dayton)

No. C-3-78-181

O R D E R

This matter is before the Court upon the following motions: (1) a motion to consolidate the above matter with Civil Action No. 4294 entitled Local 275, Lithographers and Photoengravers International Union v. The Standard Register Company, dated July 31, 1978 (Document No. 3); (2) plaintiff's motion for a supplemental order directing submission of dispute to arbitration, filed March 9,

1976, in Civil Action No. 4294; (3) motion to substitute counsel, dated August 30, 1976, filed in Civil Action No. 4294; (4) motion to strike jury demand dated July 31, 1978 (Document No. 3); (5) defendant Suagee's motion for judgment on the pleadings, filed November 7, 1979 (Document No. 22); (6) plaintiff's motion for partial judgment on the pleadings, filed January 4, 1980 (Document No. 26); (7) motion of defendant Standard Register Company for judgment on the pleadings dated January 28, 1980 (Document No. 30).

The motion to substitute counsel is hereby GRANTED nunc pro tunc to March 9, 1976, and Thomas F. Phelan, Jr. is hereby substituted as counsel for the plaintiff. The motion to consolidate Civil Action No. 4294 with the above action is hereby GRANTED.

The several motions for judgment on the pleadings require a more detailed consideration.

This is an action brought by plaintiff, Graphic Arts International Union Local 508 O-K-I, Successor to Lithographers and Photoengravers International Union Local 275 (hereinafter referred to as the "Union") against the defendants, The Standard Register Company and Freeman T. Suagee (hereinafter referred to as the "Company" and the "Arbitrator", respectively). Plaintiff seeks the removal of defendant, Suagee, as Arbitrator in a dispute between the Union and the Company and to award the Union special and punitive damages as a result of the Arbitrator's failure to issue an arbitration award. In the alternative, the Union asks the Court to order the selection of

a new arbitrator and arbitration of the dispute between the Union and the Company as soon as possible.

On April 15, 1971, the Company and the Union entered into a collective bargaining agreement which provided for binding arbitration in settlement of disputes. In 1972 a dispute arose between the company and the union.

On August 28, 1972, the Union filed suit in the United States District Court for the Southern District of Ohio (Civil No. 4294) to compel arbitration in accord with the terms of the collective bargaining agreement. On February 5, 1973, the Court by the Honorable Carl A. Weinman ordered the Company and the Union to submit their dispute to arbitration. The parties then agreed upon and selected defendant Suagee as Arbitrator. A

hearing was conducted before the Arbitrator and briefs from both parties were filed as of September 18, 1973. No decision by the Arbitrator has ever been made. Despite efforts by the Union to obtain a decision from the Arbitrator or to obtain an agreement from the Company for the appointment of a new arbitrator, both defendants have declined to take any action. Resolution of the dispute, therefore, has pended since September, 1973.

On March 9, 1976, the Union filed a motion under Civil No. 4294 for a supplemental Order directing the submission of the dispute to arbitration pursuant to the judgment previously entered. On November 1, 1976, the Court by the Honorable Carl B. Rubin wrote a letter to the Arbitrator requesting him to issue

an award by December 19, 1976, or be removed as arbitrator. The Arbitrator did not issue an award, and he was not removed.

On September 28, 1977, the Union once again asked the Company to join with it and select a new arbitrator. The Company did not respond to the Union's request. One month later the Union again asked the Arbitrator to abide by his obligation and issue an award. Again the Arbitrator did not respond. Finally, on June 12, 1978, the Union made a final request to the Company to join with it and select a new arbitrator. As before, the Company did not respond to the request. Thereafter, the Union filed the complaint now before the Court.

Alone of the parties involved, plaintiff Union has diligently sought

to arbitrate the dispute.

One of the major goals of federal labor law policy is the formation of collective bargaining agreement and the private and relatively speedy settlement of disputes arising under those agreements. West Rock Lodge No. 2120, I.A. of M. & A. W. v. Geometric Tool Co., 406 F.2d 284 (2d Cir. 1968); an arbitration provision is included in an agreement so as to secure prompt, economical and adequate solution to the grievances in return for the parties' willingness to accept less certainty of legally correct adjustment. Wilko v. Swan, 346 U.S. 427 (1953).

The potential inequity that may result to the parties from the absence of a resolution of their disputes is enormous. Employees may be deprived of benefits that are rightly theirs under the terms of the

collective bargaining agreement, or employers may be subjected to demands that are not consistent with the terms of the agreement. Accordingly, this Court finds that when two parties in a collective bargaining agreement have agreed to submit their disputes to arbitration, there is implicit in that method of resolution a duty on the part of the arbitrator to issue an award to bring the arbitration proceedings to a conclusion.

Any consideration of the role to be played by a District Court in arbitration of labor disputes must begin with a consideration of the famous "Steel Workers Trilogy:" United Steelworkers of America v. American Mfg. Co., 363 U.S. 564; United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574; United Steelworkers of America v. Enterprise

Wheel & Car Corp., 363 U.S. 593. Statements by the Supreme Court of the United States in those cases are pertinent in the consideration of the matter at hand.

> Arbitration is a stabilizing influence only as it serves as a vehicle for handling any and all disputes that arise under the agreement.

United Steelworkers of America v. American Mfg. Co., supra, at p. 567.

> . . . The grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement.

Steelworkers of America v. Warrior & Gulf

Navigation Co., supra, at 581.

> For the parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement, to make the agreement serve their specialized needs. The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance because he cannot be similarly informed. (emphasis added)

Steelworkers of America v. Warrior & Gulf Navigation Co.,supra, at 582.

> An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation but covers the asserted dispute. Doubts should be resolved in favor of coverage.

Steelworkers of America v. Warrior & Gulf Navigation Co., supra, at pp. 582, 583.

It is clear from the Steelworkers Triology and the decisions that have come since that the device of arbitration is

essential to labor peace and the keystone of the entire operation is a prompt determination by the arbitrator.

It is no longer subject to argument that where a collective bargaining agreement provides for binding arbitration, the parties are bound to do just that.

It would be an anomaly indeed if the entire structure of labor arbitration favored by Congress and the courts could be rendered impotent by the refusal of an arbitrator to decide the matter before him.

Almost six years have elapsed since this matter was heard and submitted to the arbitrator. If a court cannot at this time intervene in order that arbitration be a meaningful process, then there is no time and no circumstance under which any court may intervene. This appears so

contrary to the whole concept of arbitration that this Court rejects the notion of non-intervention *in toto*.

If there is power to order arbitration initially in compliance with a collective bargaining contract, there must be authority to intervene when the arbitration process has been circumvented by unconscionable delay by the arbitrator.

While the "Steelworkers Trilogy" has held that the courts are not to weigh the merits of the dispute they do not hold the courts are deprived of all jurisdiction in the matter. Indeed, the courts have the duty to oversee the arbitral process to insure that the parties receive the arbitration they bargained for. *Los Angeles Newspapers Guild, Local 69 v. Hearst Corp.* 504 F.2d 636, *cert. denied* 471 U.S. 930 (9th Cir. 1974).

If the facts show that one of the parties is not receiving what it bargained for in the collective bargaining agreement, the Court may invoke its jurisdiction and fashion an appropriate remedy. Therefore, while the Court agrees with the Company that it should not exercise its jurisdiction and decide the merits of the case, the Court does not agree that it is without jurisdiction to resubmit the dispute to another arbitrator.

It is clear that harm and prejudice has accrued to the Union as a result of the Arbitrator's inaction. It is entirely possible that the members of the union have, for over five years, been denied a wage increase that was rightly theirs under the terms of the collective bargaining agreement. Clearly this is not the quid pro quo the Union bargained for

and received in return for its promise not to strike. Accordingly, because the reasonableness of the time the arbitrator is to act must be judged in light of the surrounding circumstances, including any element of harm or prejudice, Local Union 560, Int. Bro. of Teamsters v. Anchor Motor Freight, Inc., 415 F.2d 220, 226 (3d Cir. 1969), it is apparent that the Arbitrator's delay in the present case is unreasonable.

Defendant Freeman F. Suagee is hereby removed as Arbitrator. He is directed forthwith to return all exhibits to the litigant which presented them. He is also enjoined from collecting any fee for services rendered from either party to the arbitration.

Pursuant to Section 27.4 of the Collective Bargaining Agreement, plaintiff Union and defendant Company are hereby

directed to request the Federal Mediation and Conciliation Service to supply a panel of seven arbitrators and to proceed thereafter in accordance with such section.

In view of the foregoing, all other questions including plaintiff's request for damages and the motion to strike jury demand will be taken under submission pending arbitration of the issue discussed above.

It is so ORDERED.

Carl B. Rubin

Carl B. Rubin, Chief Judge
United States District
Court

CIV 32
(7/53)

FILED
JOHN D. LYTER, CLERK
MAY 1 4:32 PM'80
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WEST. DIV.DAYTON

JUDGMENT ON DECISION BY THE COURT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF OHIO

Civil Action File No.
C-3-78-181

GRAPHIC ARTS INTERNATIONAL UNION,

Plaintiff,

v. JUDGMENT

THE STANDARD REGISTER CO. and FREEMAN SUAGEE,

Defendants.

This action came on for xxx(hearing) before the Court, Honorable Carl B. Rubin , United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the motion to substitute counsel is hereby GRANTED nunc pro tunc to March 9, 1976, and Thomas F. Phelan, Jr. is hereby substituted as counsel for the plaintiff. The motion to consolidate Civil Action No. 4294 with the above action is hereby GRANTED.

Defendant Freeman F. Suagee is hereby removed as Arbitrator. He is directed forthwith to return all exhibits to the litigant which presented them. He is also enjoined from collecting any fee for services rendered from either party to the arbitration.

Pursuant to Section 27.4 of the Collective Bargaining Agreement, plaintiff Union and defendant Company are hereby directed to request the Federal Mediation and Conciliation Service to supply a panel of seven arbitrators and to proceed thereafter in accordance with

such section.

Dated at Dayton, Ohio ,

this 1st day of May , 1980.

APPROVED FOR ENTRY: JOHN D. LYTER
Clerk of the Court

Carl B. Rubin
Chief Judge

By: John R. Wright
Deputy

APPENDIX C

80-3400

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GRAPHIC ARTS INTERNATIONAL UNION LOCAL 508, O-K-I, Successor to LITHEROGRAPHERS and PHOTOENGRAVERS INTERNATIONAL UNION, Local 275,

Plaintiff-Appellee

v.

THE STANDARD REGISTER COMPANY,

Defendant-Appellant

AND

FREEMAN SUAGEE,

Defendant

Filed
Oct 3 1980
John P. Hehman,
Clerk

O R D E R

Before: ENGEL, KEITH and MERRITT, Circuit Judges

No judge in regular active service of the court having requested a vote on the suggestion for a rehearing en banc, the petition for rehearing filed herein by the defendant-appellant has been referred to the panel which heard the original appeal. Upon consideration of

said petition, the court finding no issues presented which have not been previously considered,

IT IS ORDERED that the petition for rehearing en banc be and it is hereby denied.

ENTERED BY ORDER OF THE COURT
John P. Hehman

Clerk

APPENDIX D

ARTICLE 27 - GRIEVANCE AND ARBITRATION

Section 27.1. Any dispute under this Agreement involving the application or interpretation of this Agreement shall first be taken up by the aggrieved employee or employees with their supervisor.

Section 27.2. Should no settlement of the dispute be reached as provided above, the grievance shall be reduced to writing and presented to the department supervisor by the Union representative. The department supervisor shall, after discussion of the grievance, give an answer in writing.

Section 27.3. Should no settlement be reached as provided above, the matter shall be discussed by the Shop Chairman or Shop Committee, along with the Local Union officials and management representatives.

Section 27.4. Should no settlement be reached in the preceding step, the Company and Union shall request the Federal Mediation and Conciliation Service to supply a panel of seven (7) arbitrators. Each party shall then strike three (3) names from this panel, and the remaining individual shall be the arbitrator.

Section 27.5. The decision of the arbitrator, whose authority shall be limited to the interpretation and application of the provisions of the Agreement, shall be final and binding on both parties.

Section 27.6. Any cost relative to the arbitrator shall be borne equally by both parties.

Section 27.7. Any grievance which has not been submitted to arbitration within thirty (30) days of the occurrence which gave rise to the grievance, or within such additional time as may be extended by mutual agreement, shall not be recognized.

Section 27.8. In consideration of the foregoing arrangement for the adjustment of grievances, this procedure shall serve as the sole means of settling such disputes.

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-3-78-181

GRAPHIC ARTS INTERNATIONAL
UNION, LOCAL 508 O-K-I
Successor to LITHOGRAPHERS
AND PHOTOENGRAVERS INTERNA-
TIONAL UNION, LOCAL 275
2351 West McMicken Avenue
Cincinnati, Ohio 45214

Plaintiff

v.

COMPLAINT

(Trial by Jury
Demanded)

THE STANDARD REGISTER
COMPANY
626 Albany Street
Dayton, Ohio 45401

and

FREEMAN F. SUAGEE
350 Wood Street
Cincinnati, Ohio 45220

Filed
John D. Lyter,
Clerk
Jul 7 3 34 pm '78
U.S. District Court
Southern Dist.Ohio
West Div. Dayton

Defendants.

SERVE: Arthur M. Wittman
626 Albany Street
Dayton, Ohio 45401

AND

Freeman F. Suagee
350 Wood Street
Cincinnati, Ohio 45220

COUNT I

1. This is an action for declaratory and injunctive relief; for breach of a collective bargaining agreement and damages or the appointment of a new arbitrator and for other equitable relief.

2. The jurisdiction of the Court is based on Title 28 U.S.C. Sec. 1331 and 1337; Title 29 U.S.C. Sec. 185(a) and Title 9 U.S.C. Sec. 10. Declaratory and injunctive relief is sought under the provisions of Title 29 U.S.C. Secs. 2201 and 2202.

3. The plaintiff, Graphic Arts International Union, Local 508 O-K-I, is a labor organization representing employees in an industry affecting commerce as defined in Title 29 U.S.C. Sec. 152(5), and the successor to Lithographers and Photoengravers International Union Local 275.

4. The defendant, The Standard Register Company, an Ohio corporation, is engaged in commerce and in business affecting commerce as set forth in Title 29 U.S.C. Sec. 152(6) and is an employer within the meaning of Title 29 U.S.C. Sec. 152(2).

5. Defendant, Freeman F. Suagee, is an individual adult citizen of the County of Hamilton, State of Ohio, and the arbitrator selected mutually by plaintiff and defendant Company, as set forth herein.

6. On April 15, 1971, plaintiff and defendant Company entered into a collective bargaining agreement effective March 1, 1971 through February 28, 1974, which is attached hereto and incorporated herein as Attachment #1, and which provided inter alia:

(a) In Appendix "A", Wages for

various wage increases including one for $.45 per hour effective March 1, 1972, (Appendix "A"),

(b) In Article 27, Grievance and Arbitration for a final and binding grievance and arbitration procedure,

(c) In Article 29 International Approval for final approval of the terms of the Agreement by plaintiff's International President, who was then and continues to be Kenneth Brown.

7. On December 10, 1978, defendant Company announced a budget cut with possible 25% to 30% layoffs and resulted in various proposals from the several unions representing its employees to consider wage cuts or bypassing future wage increases.

8. Throughout January and February 1972, plaintiff maintained to both the Union committee and the defendant Company that it would not join in either of the suggested wage cuts or bypasses.

9. On February 27, 1978, plaintiff's

unit membership voted to turn down a Company proposal to bypass the March 1, 1972 scheduled wage increase and the March 1, 1973 increase of $.44 and $115. This action was conveyed to the defendant Company on March 2, 1972.

10. At all times after March 1, 1972 defendant Company failed and refused to place the scheduled March 1, 1972 $.45 per hour wage increase into effect, and thereby breached the terms of the collective bargaining agreement.

11. On March 10, 1972, Local 275's unit members met and voted to approve a new proposal from defendant Company to forego the March 1, 1972 wage increase only. In succession, the action was rejected by the Local 275 Executive Board on April 4, 1972; and reinstated by action of the general membership of Local 275 on April 11, 1972, at which time

a "Supplemental Agreement" was signed by Local 275 President Theodore Murphy, and submitted to the International's President Brown for approval pursuant to the provisions of Article 39 of Attachment #1. Supplemental Agreement: Attachment #A1 hereto.

12. On May 5, 1972, International President Brown turned down the "Supplemental Agreement" and so notified representatives of Local 275 and defendant Company.

13. On May 13, 1972, Local 275's unit membership at defendant Company met and voted not to accept the Supplemental Agreement in accordance with the action of the International President, and so notified representatives of defendant Company.

14. On May 30, 1972, representatives of defendant Company orally informed

representatives of Local 275 that it would not pay the scheduled March 1, 1972 wage increase.

15. At all times since the actions of the International President and the Local 275 membership in rejecting the Supplemental Agreement, defendant Company has failed and refused to place the said March 1, 1972 wage increase into effect, and has thereby breached the terms of the collective bargaining agreement.

16. On June 12, 1972, a grievance (attached hereto and incorporated herein as Attachment #2) was filed by Theodore Murphy, then President of plaintiff Local Union No. 175, pursuant to the provision of the collective bargaining agreement, which was denied by defendant.

17. On August 28, 1972, following a claim by the defendant Company that the subject matter of the grievance was not

arbitrable under the terms of the agreement and a subsequent refusal to arbitrate, the plaintiff Union filed suit in this Court, to compel arbitration pursuant to the terms of Article 27 of Attachment #1. (Civil No. 4294).

18. On February 5, 1973. this Court, on the plaintiff Union's motion for judgment on the pleadings, issued its Opinion and Judgment, said Judgment reading as follows:

> It is therefore, ORDERED, ADJUDGED and DECREED that the plaintiff Union and the defendant Company submit the disputes described in this action to arbitration as provided for in Article 27 of the Collective Bargaining Agreement.

19. Pursuant to said Judgment, the parties agreed upon and designated Freeman F. Quagee of Cincinnati, Ohio, to act as Arbitrator for the resolution of said dispute. Attachment #3 hereto. Hearing

before the said Arbitrator was concluded on July 11, 1973. Under date of August 20, 1973, the Arbitrator notified the parties of the receipt of transcript and fixed September 7, 1973 as the date for filing of post-hearing briefs. On September 6, 1973, at the request of counsel for the defendant Company, the date for mailing of briefs was extended to September 17, 1973. On September 17, 1973, counsel for the plaintiff Union mailed brief on behalf of Union to the Arbitrator. Counsel for the Union thereafter received from counsel for the Company copy of Company's brief with copy of covering letter to the Arbitrator dated September 18, 1973 transmitting original of Company's brief to the Arbitrator.

20. Since the submission of said briefs, the matter has been before the

said Arbitrator awaiting decision. Prior to June 18, 1975, counsel for the plaintiff Union, by telephone, requested counsel for defendant Company to join in an inquiry to the Arbitrator as to the status of the case. Having received no response to this suggestion from counsel for the Company, Union counsel wrote the Company counsel on June 18, 1975, renewing the suggestion of said joint inquiry. Having received no response to said letter, counsel for the Union advised Company counsel that Union intended to make such inquiry alone, and on June 27, 1975, counsel for the Union wrote to the Arbitrator, with copy to the Company counsel, inquiring as to the status of the case. Copy of said letter of June 27, 1975, is attached hereto and marked Attachment #4.

21. No written reply to said letter

of June 27, 1975 has ever been received from the Arbitrator. Thereafter, calls were repeatedly placed to the residence phone and the office phone of the said Arbitrator resulting in no answer at the former, and no response to messages left at the latter, until July 24, 1975. On that date, a call was received at the office of counsel for the Union, and a message was left stating that the Arbitrator had "located the file" and that the case was being worked on.

22. On September 30, 1975, no further word having been received from the Arbitrator, counsel for the Union again wrote to the Arbitrator with copy to counsel for the Company, inquiring when decision might be expected. Copy of said letter of September 30, 1975, is attached hereto and marked as Attachment #5. No response of any kind has ever been received.

23. On November 7, 1975, counsel for the Union wrote to counsel for the Company proposing that the parties agree upon another Arbitrator to hear and resolve the dispute, and offering to make such submission on the basis of the completed transcript. Copy of said letter of November 7, 1975, is attached hereto, marked as Attachment #6. Under date of January 8, 1976, counsel for the Company replied to the letter of November 7, 1975, stating only that "the proposals contained in your November 7, 1975, letter are not appropriate". Copy of said reply of January 8, 1975 is attached hereto and marked as Attachment #7.

24. On January 16, 1975, counsel for the Union wrote to counsel for the Company asking that counsel for the Company advise of any suggestions as to any procedure which counsel for the Company would deem

to be appropriate and in which counsel for the Company would be willing to join. Copy of said letter of January 16, 1976, is attached hereto and marked as Attachment #8.

25. No response has ever been received from counsel for the Company to said letter of January 16, 1976.

26. On March 9, 1976, plaintiff filed a motion in this Court under the old Case Number 4294, captioned "Plaintiff's Motion for Supplemental Order Directing Submission of Dispute to Arbitration Pursuant to Judgment Previously Entered Herein", to which opposition memoranda were filed by defendant Company on June 28, 1976 and December 16, 1976, and a final reply by plaintiff on December 27, 1976. No ruling was ever received on this motion.

27. On November 1, 1976, United States District Judge Carl B. Rubin

addressed a letter to defendant Suagee, attached hereto and incorporated herein as Attachment #9, in which he established suggested date of December 19, 1976 to issue an award or be removed as arbitrator and stating that he would direct the parties to select a new arbitrator. Plaintiff was not informed regarding any response to this letter. The Arbitrator was not removed and the parties were not ordered to select a new arbitrator.

28. On March 31, 1977, plaintiff wrote to the Court to request a status report on the subject motion. The letter is attached hereto and incorporated herein as Attachment #10.

29. On April 5, 1977, this Court notified the undersigned Trial Attorney that the letter of March 31, 1977 had been referred to Judge Weinman by letter attached hereto and incorporated herein as Attachment #11.

defendant Suagee of October 20, 1977, and no award has issued.

34. On June 12, 1978, plaintiff made a final request to defendant company to join with it in selecting a new arbitrator and to resolve the matter, to which defendant Company has continued to fail and refuse to reply. (Attachment #14)

35. At all times since the said arbitration hearing defendant Suagee has failed and refused to submit a decision to the parties on the subject arbitration, in spite of numerous inquiries on the part of the plaintiff Union to do so.

36. The actions of defendant Company in failing to secure an arbitration award constitutes a breach of its collective bargaining agreement with plaintiff and a violation of this Court's prior order which has caused severe damage tc plaintiff and its members.

30. In July of 1977, the undersigned Trial Attorney was orally informed by Judge Weinman's law clerk that he did not believe he had jurisdiction over the matter and would not take further action on it, including therein his refusal to issue a written decision on that point.

31. Thereafter, on September 28, 1977 plaintiff by letter attached hereto as Attachment #12, invited defendant Company to join with it in selecting a new arbitrator.

32. On October 20, 1977, a copy of the September 28, 1977 letter was sent to Arbitrator Freeman F. Suagee and requesting that the Arbitrator abide by his obligation and issue an award. Attached hereto as Attachment #13.

33. No responses were received to either the letter to defendant Company of September 28, 1977, or the letter to

37. Plaintiff has thoroughly exhausted the provisions of the grievance and arbitration procedures by aggressively pursuing an arbitrator's resolution of the 1972 greivance as set forth above; it is hereby excused from further obligation to follow that procedure and the defendant Company is estopped to deny resolution of the grievance through any means other than the arbitration procedure.

38. By its breach of the collective bargaining agreement defendant Company has caused and is continuing to cause damage to plaintiff's 150 members and other employees in the bargaining unit in the amount of $.45 per hour of a minimum of 37.5 hours per week, 52 weeks per year for 6 years, 3 months, and continuing through the date of the filing of this Complaint in the amount of $840,281.25, plus overtime, night differential and interest as further determined by the

Court.

39. In addition, plaintiff has been further damaged by having to retain an attorney and expend substantial arbitration and Court costs to pursue resolution of this matter.

WHEREFORE, plaintiff demands the relief set forth in the prayer.

COUNT II

40. Plaintiff hereby incorporates the allegations of paragraphs 1-39 as if fully pleaded herein.

41. At all times since the said arbitration hearing, defendant Company has failed and refused to take any action to either secure an opinion from defendant Suagee or to obtain a new arbitrator to resubmit the dispute for determination, and Arbitrator Suagee has failed and refused to issue an award. As a result,

nearly 6 years after the grievance arose the dispute has not been settled.

42. The failure, refusal and/or neglect on the part of the defendant Company constitutes a breach of the collective bargaining agreement, a violation of the Court's order to arbitrate and a violation of the Court's Order to arbitrate and a violation of the U.S. Arbitration Act, Title 9 U.S.C. Secs. 1, 2, 5, 6, 9 through 13.

43. The failure and refusal on the part of defendant Suagee to render a decision on the grievance submitted to him by the parties is a breach of his contract to act as arbitrator and to issue an award, and violative of the provisions of the Arbitration Act, Title 9 U.S.C. Secs. 1, 5, 6, 9 through 13.

44. Under the circumstances set forth herein the purported submission of the dispute to arbitration has been

rendered a nullity, and has negated the purpose and intent of the grievance and arbitration provisions of the collective bargaining agreement, and this Court's prior order.

45. The Arbitrator should therefore be removed by order of this Court, and in the alternative in the event that the Court does not decide the merits of the collective bargaining dispute, defendant Company should be ordered to select a new arbitrator and to proceed to arbitration, the costs of which should be borne by the defendants as ordered by the Court.

WHEREFORE, plaintiff demands the relief set forth in the prayer.

COUNT III

46. Plaintiff hereby incorporates the allegations of paragraphs 1 through 45 as if fully pleaded herein.

47. As a further result of the above cited breaches of contract in the conduct of defendant Suagee in refusing to issue an award, and in the conduct of defendant Company in refusing to join with plaintiff in securing an award, plaintiff's status as majority representative has been seriously jeopardized, causing a rival union to file a petition at the National Labor Relations Board on December 27, 1976; an inconclusive election in which no one received a majority on March 11, 1977; and a Board proceeding on objections to the election that was not concluded until June 2, 1978, captioned The Standard Register Co., 236 NLRB No. 75.

48. During the campaign defendant Company issued a letter with the following statement:

> But do you remember the wage freeze: Those of you in the GAIU at that time had to fight your own union to get it to

> do what was necessary to try to prevent further loss of more of your jobs. Even after you forced your local union leadership to change its mind and act in your best interests, the International ignored the clearly stated wishes of the majority and said it did not care what Standard's employees wanted or how necessary that wage freeze was to Standard's employees' job security. It would not agree to it. Is that controlling your own destiny?

This caused the plaintiff to respond with the following answer that lead to the above cited objections and Board decision, upholding its conduct as not a ground to set the first election aside:

> As the Company stated in their presentation to the employees, the GAIU has a case pending in Court regarding the "lost" $.45 wage increase. It would be to the Company's advantage if the GAIU was defeated in the election and would ultimately decide not to spend the remaining members' dues

in an effort to collect the lost wage increase for its former members. This would relieve the Company of an approximately $4,000. pending liability per each affected member.

49. As a direct result of defendants' conduct, plaintiff must now proceed with a run-off election which, regardless of the outcome, has cost the plaintiff $_____ in lost dues, fees and assessments from its members, and for which the defendants should be held liable in damages as ordered by the Court.

WHEREFORE, plaintiff demands the relief set forth in the prayer.

WHEREFORE, plaintiff prays that the Court:

1. Assume subject matter jurisdiction over all elements of this case.

2. Declare that there are implied obligations in Title 9 U.S.C. Secs. 1, 5,

6, 9 through 13, upon an arbitrator to issue an award and to be dilegent in issuance of the award.

3. Declare that there is an implied obligation on the part of all parties to an agreement to arbitrate under the provisions of Title 29 U.S.C. Secs. 2 and 4 and under the provisions of an arbitration agreement to obtain an award within a reasonable period of time and to select a new arbitrator if the arbitrator is not diligent in the issuance of the arbitration award.

4. Declare that the agreement of a person to act as arbitrator in a dispute constitutes an implied contract with the parties to hear the matter and to issue an award in a timely and diligent manner and that the breach of that contract renders the arbitrator liable to the parties in damages.

5. Find that defendant Company has failed to procure an arbitration award in a timely and diligent manner.

6. Find that defendant Suagee has failed to issue an award and/or that he has failed to issue an award in a timely and diligent manner.

7. Find that the actions of defendant Company constitute a breach of its collective bargaining agreement with the plaintiff under the provisions of Title 29 U.S.C. Sec. 185 and a violation of the provisions of Title 29 U.S.C. Secs. 1, 2, and 4.

8. Find that the actions of defendant Suagee in failing and refusing to issue an arbitration award constitutes a violation of the implied obligations of Title 9 U.S.C. Secs. 1, 2, 5, 6, 9 through 13, and a breach of his implied contract with plaintiff.

9. Order that the defendant Suagee be removed from the dispute as arbitrator.

10. Award plaintiff special damages against defendant Company jointly and severally in the amount of $840,281.25 for straight time wages lost to members of the bargaining unit since March 1, 1972.

11. Award plaintiff additional special damages for all overtime, night differential, and interest on all wages lost as determined by the Court.

12. Award plaintiff special damages for all lost dues, fees and assessments in the amount of $73,562.00.

13. Award plaintiff punitive damages against the defendants in the amount of $1,000,000.00 against defendant Company and $100,000.00 against defendant Suagee.

14. In the alternative, in the event that the Court does not decide the merit collective bargaining agreement

dispute, order defendant Company to select a new arbitrator and to proceed to arbitration on the dispute as soon as possible, the costs of the said arbitration to be borne by either or both of the defendants as ordered by the Court.

15. Award plaintiff its costs and a reasonable attorney fee to be paid jointly and severally by the defendants.

16. Award such other relief as the Court deems equitable, necessary and proper.

Thomas F. Phalen, Jr.

THOMAS F. PHALEN, JR.
Trial Attorney for Plaintiff
510 Gwynne Building
602 Main Street
Cincinnati, Ohio 45202
Tel: (513) 721-3442

Of Counsel:

Eugene Cotton, Esq.
Cotton, Watt, Jones, King and Bowlus
Suite 4750, One IBM Plaza
330 North Wabash Avenue
Chicago, Illinois 60611

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in accordance with Rule 38(b) of the Federal Rules of Civil Procedure.

Thomas F. Phalen, Jr.

THOMAS F. PHALEN, JR.

CERTIFICATE OF SERVICE

I hereby certify that I have this 2ND day of January, 1981, caused three copies of the foregoing Petition For a Writ of Certiorari to be served upon the following persons by depositing a copy of same in the United States mail, postage pre-paid:

Thomas F. Phalen, Esquire
Kircher & Phalen
Suite 2312 Kroger Building
1014 Vine Street
Cincinnati, Ohio 45202

Jerry F. Venn, Esquire
Venn & Jones
1200 Mercantile Building
414 Walnut Street
Cincinnati, Ohio 45202

William J. Ross

Counsel of Record

NO. 80-1116

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE STANDARD REGISTER COMPANY,

Petitioner.

v.

GRAPHIC ARTS INTERNATIONAL UNION LOCAL 508, O-K-I, SUCCESSOR TO LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 275,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Counsel of Record:

Thomas J. Phalen, Jr.
Kircher and Phalen

2312 Kroger Building
1014 Vine Street
Cincinnati, Ohio 45202
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QUESTION PRESENTED

Whether the Court of Appeals correctly decided that an order removing an arbitrator and ordering a second arbitration under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, was not a final appealable order because it was a "step in the judicial enforcement of the original arbitration order" under *Goodall-Sanford, Inc.* v. *United Textile Workers,* 353 U.S. 550 (1957).

II.

PARTIES

The parties to the proceeding in the court whose judgment is sought to be reviewed are Graphic Arts International Union, Local 508 O-K-I, successor to Lithographers and Photoengravers International Union, Local 275; The Standard Register Company; and Freeman F. Suagee.

TABLE OF CONTENTS

	Page
Table of Authorities	IV
Counter Statement of the Case	1
Reasons for Denying the Petition for a Writ of Certiorari	3
I. The Decision Of The Court of Appeals Does Not Conflict With This Court's Decision In *Goodall-Sanford, Inc.* v. *United Textile Workers,* 353 U.S. 550 (1957)	3
II. There Is No Conflict Between The Decision Of The Court Of Appeals And Those Of Other Courts Of Appeals.	4
III. The Decision Of The Court of Appeals Applies Only To The Unique Factual Situation Of This Case.	5
IV. The Issue Presented In This Case Is Not Ripe For Supreme Court Review.	6
Conclusion	7

TABLE OF AUTHORITIES

Cases:	Page
Clark v. *Kraftco Corp.*, 447 F.2d 933 (2nd Cir. 1971)	5
E. C. Ernst, Inc. v. *Manhattan Construction Company of Texas*, 551 F.2d 1026 (5th Cir. 1977)	6-7
Electrical Workers v. *Northeast Telephone Co.*, 105 LRRM 2211 (1st Cir. 1980)	5
Goodall-Sanford, Inc. v. *Textile Workers*, 353 U.S. 551 (1957)	3, 4, 5
Robbins v. *George W. Prescott Publishing Co.*, 614 F.2d 3 (1st Cir. 1980)	4, 5
Wells v. *Southern Airways, Inc.*, 517 F.2d 132 (5th Cir. 1975), *cert. denied*, 425 U.S. 914 (1976)	4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-1116

THE STANDARD REGISTER COMPANY,

Petitioner.

v.

GRAPHIC ARTS INTERNATIONAL UNION LOCAL 508, O-K-I, SUCCESSOR TO LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 275,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

COUNTER STATEMENT OF THE CASE

For the purposes of this petition, the Respondent accepts the Petitioner's Statement of the Case except in the following respects:

1. Prior to June 18, 1975, Counsel for the Respondent, Graphic Arts International Union, Local 508, O-K-I, Successor to Lithographers and Photoengravers International Union, Local 275 ("Union") requested Counsel for Petitioner, The Standard Register Company ("Company") to join in an inquiry as to the status of the arbitration case,

After that date, the Union repeatedly attempted to contact the Arbitrator by telephone and letter (App. E, p. E-11). Throughout 1975 and 1976 the Company refused to contact the Arbitrator or replace him with a new Arbitrator.

2. On November 1, 1976, in response to a Union request, United States District Judge Carl B. Rubin addressed a letter to the Arbitrator in which he established a suggested date of December 19, 1976 to issue an award or be removed as Arbitrator and stating that he would direct the parties to select a new Arbitrator (App. E., p. E-11).

3. On June 12, 1978, the Union made a final request to the Company to resolve the matter, to which the Company never replied. Only after exhausting all contractual grievance and arbitration procedures plus making every effort to find another solution, did the Union bring the instant action (App. B, p. B-5).

4. After the Court of Appeals for the Sixth Circuit dismissed the Company's appeal for lack of jurisdiction, that Court denied the Company's petition for a rehearing *en banc* on October 3, 1980 (App. C, p. C-1, C-2).

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

I.

The Decision Of The Court Of Appeals Does Not Conflict With This Court's Decision In Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957).

A. The Order In The Instant Case Is Distinguishable From That in Goodall-Sanford.

The instant case concerned a unique situation, substantially different from that facing the District Court in any case cited by the Petitioner. The District Court in the present case removed an Arbitrator who had refused to rule on an arbitration previously ordered by that same court. It also directed a new arbitration of the dispute and took Respondent's request for damages under submission pending that arbitration (App. B, p. B-14, B-15). By contrast, Petitioner's primary authority involved a routine order to arbitrate which was brought to the District Court for the first time. *United Textile Workers* v. *Goodall-Sanford, Inc.,* 131 F.Supp. 767 (D. Maine 1955). This Court found that the order in *Goodall-Sanford* was a final order because it was not "merely a step in judicial enforcement of a claim nor auxiliary to the main proceeding but the full relief sought." *Goodall-Sanford, Inc.* v. *United Textile Workers,* 353 U.S. 550, 551 (1957). Contrary to the Petitioner's contention, this Court did not hold that arbitration was "never" a step in judicial enforcement (Petitioner's brief at 19).

B. The Court of Appeals Correctly Interpreted And Followed Goodall-Sanford.

The Court of Appeals carefully considered the instant case in the light of *Goodall-Sanford*. It noted that the arbitrability of the dispute was not at issue as it was in *Goodall-Sanford*. The Court said that the submission to a second Arbitrator was but a step in the judicial enforcement of the original order (App. A, p. A-3). Also the order did not allow for the full relief requested (App. 4, p. A-4). The Court of Appeals found that the order was not a final appealable order under the standards set down by *Goodall-Sanford*. Therefore its decision did not conflict with the Supreme Court's decision, but merely applied it to the circumstances of the present case.

II.

There Is No Conflict Between The Decision Of The Court Of Appeals And Those Of Other Courts of Appeals.

The decisions cited by the Petitioner are not in conflict with the decision in the instant case because the orders in those cases were different. In *Wells* v. *Southern Airways, Inc.*, 517 F.2d 132, 133 (5th Cir. 1975), *cert. denied*, 425 U.S. 914 (1976), the District Court found that a Systems Board had denied the Plaintiff due process and ordered a new hearing. The District Court had not ordered the original arbitration and no Arbitrator had refused to rule. Therefore, the order was final because it was not a step in judicial enforcement.

In *Robbins* v. *George W. Prescott Publishing Co.*, 614 F.2d 3 (1st Cir. 1980), the District Court held its action in abeyance pending a *grievance* proceeding. When the Union and Company failed to arbitrate the grievance, the

Court ordered arbitration. *Id.* at *4*. Again, the Court had not originally ordered arbitration so *Robbins* is not comparable to the instant case. The order in *Electrical Workers* v. *NE Telephone Co.*, 105 LRRM 2211 (1st Cir. 1980), concerned a remand by the District Court to the original arbitration board.

In summary, *none* of the above cases cited by Petitioner involved a second court order to arbitrate due to an incomplete arbitration. Therefore, they are not in conflict with the decision of the Court of Appeals in the instant case.[1]

III.

The Decision Of The Court Of Appeals Applies Only To The Unique Factual Situation Of This Case.

The order of the Court of Appeals in the instant case may be limited to the unusual facts of this case or cases closely related to these facts. It would certainly apply in the face of an Arbitrator's refusal to issue an award when the District Court had once determined arbitrability or to cases wherein arbitration had been ordered by the court whether arbitrability was or was not the threshhold issue. It would not apply to the common situation where a Court had modified or vacated an award or had remanded it

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[1] The Second Circuit in *Clark* v. *Krafto Corp.*, 447 F.2d 933 (2nd Cir. 1971), while deciding the issue on a different basis, discussed the appealability of a 301 order. It stated that an order compelling arbitration made in the course of a continuing litigation is not a final order. *Id.* at 935. Although the facts in *Clark* differ from those in the instant case, this decision reinforces the Sixth Circuit's contention that *all* arbitration orders are not final under *Goodall-Sanford*.

to an Arbitrator. It is not certain whether the principle could be applied in a case where the Arbitrator had refused to rule but where there had been no initial judicial proceeding to compel arbitration. However that question is not before the Court. Clearly, Respondent is not questioning the finality of an order compelling arbitration as an original matter before the Court where there had been no prior submission to an Arbitrator. It is also conceivable that the very issue in a suit to compel arbitration would be a question as to whether the issue had been arbitrated in a prior arbitration. The present Circuit Court ruling would not affect the finality of an order to arbitrate in such a circumstance.

Therefore, contrary to the contention of the Petitioner, the decision of the Court of Appeals does not raise an important question of labor law or place the parties to an arbitration in an untenable position. It merely applies the principles of *Goodall-Sanford* to a unique situation.

IV.

The Issue Presented In This Case Is Not Ripe For Supreme Court Review.

The issue of the appealability of an order to remove an Arbitrator that had refused to rule in a case submitted to him has not been developed by the Court of Appeals. As was shown in Section II, the decisions cited by the Petitioner involved different types of orders than that in the instant case. There are no reported cases under 29 U.S.C. § 185 where an Arbitrator has refused to rule following an order compelling arbitration. There appears to be no Section 301 cases where an Arbitrator has failed to rule or has been removed under any circumstances. The only related non-labor authority appears to be *E. C. Ernst,*

Inc. v. *Manhattan Construction Company of Texas,* 551 F.2d 1026 (5th Cir. 1977), *cert. denied,* 434 U.S. 1067 (1978). In that case, damages were awarded to a construction subcontractor for an architect-arbitrator's delays in ruling. *Id.* at *1035.* It is not comparable to the instant case. An award for damages is clearly appealable unlike an order to remove an Arbitrator. Since there have been no similar cases decided, this Court should not grant this petition for a writ of certiorari until the lower courts have had the opportunity to more fully develop this issue

CONCLUSION

For these reasons, Respondent respectfully submits that the petition for a writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this ..... day of February, 1981, caused copies of the foregoing Brief In Opposition To Petition For Certiorari to be served upon the following persons by depositing three copies of same in the United States mail, postage pre-paid:

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